

PT 95-39
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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LEXINGTON COMMUNITY CENTER, INC.      )   Docket No.(s)  93-57-11  
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      Applicant                        )   PI No.   09-08-156-019  
                                         )   (McLean County)  
      v.                               )  
                                         )  
THE DEPARTMENT OF REVENUE              )   George H. Nafziger  
OF THE STATE OF ILLINOIS              )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Benjamin H. Roth appeared on behalf of the Lexington Community Center, Inc.

SYNOPSIS: The hearing in this matter was held at 101 West Jefferson Street, Springfield, Illinois, on April 5, 1995, to determine whether or not McLean County parcel No. 09-08-156-019 and the building thereon, should be exempt from real estate taxes for the 1993 assessment year.

Is the Lexington Community Center, Inc. (hereinafter referred to as the "Applicant"), a charitable organization? Did the Applicant own the parcel here in issue during the 1993 assessment year? Did the Applicant use the parcel here in issue and the building thereon, for charitable purposes during the 1993 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant is not a charitable organization. It is also determined that the Applicant owned the parcel here in issue and the building thereon, during the 1993 assessment year. It is further determined that the entire building on the parcel here in issue was used for both charitable purposes, and was also leased for profit during the 1993 assessment year. Finally,

it is determined that the leasing of all, or portions of, said building was more than merely incidental, and consequently said parcel and building were not used for primarily charitable purposes during the 1993 assessment year.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department"), in this matter, namely that the parcel here in issue and the building thereon, did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 6B.

Mr. James S. Lindsay, president of the Applicant, Ms. Janet Oliver, building manager for the Applicant, and Mr. Robert Payne, a board member of the Applicant, were present at the hearing, and testified on behalf of the Applicant.

The City of Lexington has a population of approximately 1,800 people, and if the surrounding area is included, the population is about 2,500 people. In the late 1980s, the community became aware of the fact that there was, within the community, no meeting hall which could accommodate community meetings or events. During 1989, one Catherine Keller, a long-time resident of Lexington died, and her will established a trust with instruction to establish a community center, if that was practical. A 15-person community steering committee was formed to determine if a community center should be built, and how it should be funded and operated. This committee first established that there was a need for a community center, and second, that it should be owned and operated by a not-for-profit corporation. The initial members of the board of directors of the Applicant corporation were chosen from among the members of the steering committee. The Applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, on February 26, 1990, for the following purposes:

"To serve primarily for social, civic and educational purposes as stated in section 103.05 of the General Not For Profit Act."

On January 16, 1991, the purpose clause of the Articles of Incorporation of the Applicant were amended to read as follows:

"The corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code."

After the incorporation of the Applicant, the board of directors initiated a public fund-raising campaign during October and November 1990, which raised approximately \$150,000.00. The Catherine Keller Trust then, on June 24, 1991, donated the parcel here in issue to the Applicant, and agreed to provide the additional funds necessary to construct and equip the community center. Construction of the center began during July of 1991, and was completed during April 1992. There were funds provided by the Keller trust, which were not expended for the construction and equipping of the community center. As of January 1, 1993, the balance of these funds was \$34,292.40. This balance was retained by the community center, as an initial operating fund.

The Applicant, during 1993, had no capital, capital stock, or shareholders. The income of the Applicant, during 1993, consisted of donations received during the year, of \$7,662.41, rents received of \$9,670.00, and interest received of \$648.33. Expenses for the year, 1993, totaled \$35,694.70. The only paid employee of the Applicant, during 1993, was the building manager, Ms. Janet Oliver, whose total remuneration, during 1993, was \$9,115.40.

The building on this parcel is a one-story brick structure, which contains a long lobby, which runs the width of the building, east to west. At the west end of the lobby is a men's restroom, and at the east end of the lobby is a women's restroom. There are three rooms, which open off the lobby. The middle room is a large all-purpose/banquet room. The west room is a combination meeting/dining room. The kitchen is behind this west room. Food may be served from the kitchen, directly into the west room, or

the middle room. Along the side of, and behind the kitchen, are several storage rooms and a mechanical room. The east room is a meeting room, with a coffee bar along one wall. Behind the east room, is a storage room and a mechanical room. A hallway separates the east room from the middle room.

During 1993, the Peacemeal program, Lexington Senior Citizens, the Lexington Task Force on Aging, the Lexington Emergency Services Disaster Association, the Lexington Park District, the Lexington Ambulance Board, the Lexington EMT squad, the City of Lexington, the area churches, as well as the ministerial association, the Girl Scouts, Boy Scouts, VFW, American Legion, the Lexington Community Women's Club, the Kiwanis Club, the Chamber of Commerce, the Artisan's Guild, Habitat for Humanity, and McLean County Rural Police Chiefs' Association, all used the building, at no charge.

In addition, when the foregoing community groups were not using the building, it was rented for family reunions, wedding receptions, class reunions, and anniversary parties. When the building was rented for an anniversary party, birthday party, or business meeting, the charge for the large room was \$75.00, the charge for the west room, or the east room, was \$30.00, and the charge for the kitchen was \$20.00. The fee for a wedding reception for the entire day during 1993, was \$300.00. The rental agreement used by the Applicant also required a security deposit of \$200.00.

The building manager, Janet Oliver, testified that the rental fee for the high school prom was waived, and that group only paid a clean-up fee. She also testified that no rental charge was made for funeral dinners. The other private parties, including wedding receptions, anniversary parties, birthday parties, and family reunions, were all charged the appropriate fee in accordance with the fee schedule. She also testified, concerning the \$200.00 deposit, that she only collected this amount in the case of wedding receptions, and for parties where alcohol was to be served. Applicant had

a separate agreement form for parties where alcohol was to be served. During 1993, the rentals with alcohol were primarily the wedding receptions.

During 1993, the Peacemeal program used the kitchen, one storage room, and either the west room, or the middle room, five days a week for three hours per day, to operate an age 60, and over, feeding program. The food was brought out from Bloomington, and served from the kitchen in the building on this parcel to the participants. Peacemeal, during 1993, employed a local coordinator who supervised the meal service and cleanup, using the help of volunteers. Peacemeal requested a donation of \$1.50 for its meals. If a person could not afford to pay, they received a meal anyway. An average of 20 persons participated in the Peacemeal program daily during 1993.

The east room was used by the local senior citizens on a daily basis from 7:00 A.M. until about 7:00 P.M.. There is a coffee bar along one wall. The building manager testified that when she opened the building at 7:00 A.M. during 1993, she made coffee in the east room, and made sure there were cookies there for the seniors. There was a television set in the east room, and senior citizens came and went all day long. There was one fellow in his fifties who played cards with some of the seniors, and the group made him an honorary senior citizen. There was no fee of any kind charged to the seniors for the use of the east room. The building manager testified that the east room was used by other groups later in the evening after the senior citizens had gone home. One of the other groups which used the east room during 1993, was Weight Watchers, which held 48 meetings in the building during that year.

1. Based on the foregoing, I find that the Applicant owned the parcel here in issue and the building thereon, during all of the 1993 assessment year.

2. During 1993, I find that the Applicant had no capital, capital stock, or shareholders, and no one profited from the enterprise.

3. In view of the fact that the rental fees were not waived or reduced in cases of need concerning the rentals for private parties, including weddings, anniversary parties, birthday parties, and family reunions, I find that the benefits were not available to an indefinite number of persons, that charity was not dispensed to all who needed and applied for it, and that the obstacles of rental fees and security deposits were placed in the way of those seeking the benefits.

4. During 1993, I find that the Applicant's primary source of income was rental fees.

5. I consequently find that the Applicant has failed to establish that it is a charitable organization.

6. Finally, I find that the leasing of all, or portions of, the building on this parcel was more than merely incidental, and consequently this parcel and the building thereon, were not primarily used for charitable purposes during the 1993 assessment year.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant

an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that the Applicant has failed to meet guidelines (1), (3), (4), (5), or (6) during the 1993 assessment year.

Concerning the various rentals of the building on this parcel, the Illinois Courts have consistently held that property which is leased or otherwise used with a view to profit, does not qualify for exemption, even if the net income from said leasing or use for profit is used for exempt purposes. *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136 (1924). See also *The Salvation Army v. Department of Revenue*, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied.

Where, as here, the property as a whole was used for both exempt purposes and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971).

During 1993, both the west room and the east room were rented to Weight Watchers for a total of 48 meetings. Wedding receptions used either, or both, the middle room or the west room, as well as the kitchen. During 1993, there were four anniversary parties, which used the middle room and the kitchen. In addition, there were four business groups which rented the middle room, as well as three family events which used the west room or the middle room, as well as the kitchen. In addition, it should be pointed out that of the \$17,980.74 of income received by the Applicant during 1993, \$9,670.00 was rental income. Certainly, the nonexempt or rental use of all areas of the building on this parcel was more than merely incidental, during the 1993 assessment year.

Consequently, I conclude that while Applicant owned the parcel here in issue during 1993, it failed to establish that it was a charitable organization, or that it used the building on this parcel for primarily charitable purposes during 1993.

I therefore recommend that McLean County parcel No. 09-08-156-019 remain on the tax rolls for the 1993 assessment year, and be assessed to the Applicant.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge